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LEGAL AID STATUTES IN CANADIAN PROVINCES

ATTORNEY-GENERAL'S
DEPARTMENT
OTTAWA

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COLLATION OF CANADIAN LEGAL AID STATUTES

1. STATUTES

Alta.: The Legal Profession Act, R.S.A. 1970, Ch. 203, S. 4 provides that, subject to the approval of the Lieutenant Governor in Council, the Attorney General and the Law Society of Alberta may enter into an agreement respecting legal aid.

The Legal Profession Amendment Act, 1972 (No. 2), S.A. 1972, ch. 114, ss. 102 & f. establish the Alberta Law Foundation, one of the objects of which is to provide assistance to native people's legal programmes, student legal aid programmes, and programmes of like nature (s. 103(a)(iv)).

(An error in The Legal Profession Act, *supra*, is corrected in The Attorney General Statutes Amendment Act, 1973, No. 3), S.A. 1973, Ch. 62, s. 3(2).)

B.C.: The Legal Professions Act, R.S.B.C. 1960, Ch. 214, amended by 1969, Ch. 15, S. 16, and 1972, Ch. 32, SS. 8-9, establishes a corporation with the name Law Foundation in S 71E & f., one of the purposes of which is to establish and maintain a fund to be used for legal aid, inter alia, (in S. 71G(1)).

Man.: The Legal Aid Services Society of Manitoba Act, S.M. 1971, Ch. 76, amended by S.M. 1972, Ch. 63. The Regulation under which is Man. Reg. No. 106/72.

The Attorney-General's Act, R.S.M. 1970, Ch. 13, S. 11 also provided for the establishment and administration of a legal aid scheme by the Attorney-General. This provision, however, appears to have been superseded by the later enactment of The Legal Aid Services Society of Manitoba Act, *supra*.

Nfld.: No statutory provision could be found in the library.

N.B.: The Legal Aid Act, S.N.B. 1971, Ch. 11. The Regulation under which is Reg. 71-114, as amended by Reg. 72-73.

N.S.: The Legal Aid Planning Act, S.N.S. 1970-71, Ch. 14 authorizes the Attorney-General to enter into an agreement with the N.S. Barristers' Society for the providing of legal aid. No regulations have yet been passed under this Act.

- Ont.: The Legal Aid Act, R.S.O. 1970, Ch. 239, amended by S.O. 1973, Ch. 50. The Regulation under which is R.R.O. 1970, Reg. 557, amended by O. Reg. 224/72.
- P.E.I.: No statutory provision could be found in the library.
- Que.: The Legal Aid Act, S.Q. 1972, Ch. 14. The Regulation under which is Reg. 73-289.
- Sask.: The Legal Profession Act, R.S.S. 1965, Ch. 301, amended by S.S. 1971, Ch. 22, and S.S. 1973, Ch. 55, establishes a corporation called the Law Foundation (at S. 44A. & f.), one of the purposes of which is to establish and maintain a fund to be used for legal aid, inter alia, (at S. 44 C. [1]).

As may be noted from the above data, there are only four Provinces with comprehensive statutory schemes: Manitoba, New Brunswick, Ontario and Quebec. Most of the data hereinafter set down with respect to the legal aid plans of the other Provinces will have been obtained from the 1973 Report of the Saskatchewan Legal Aid Committee, Chap. II. Such information, although outside the purview of a collation of statutes, is relevant to the working of the various plans presently in existence within Canada.

Please note that the abbreviation S. will denote a section from the relevant provincial statute, while the abbreviation sec. will denote a section from the relevant provincial Regulation.

2. Commencement Dates

- Alta.: Plan commenced operation on March 29, 1967.
B.C.: Legal Aid Society of B.C. incorporated on February 26, 1970.
Man.: Plan commenced operation on Sept. 1, 1972.
N.B.: Plan commenced operation on Jan. 1, 1972 with respect to criminal matters.
N.S.: Plan commenced operation in summer, 1972.
Ont.: Plan commenced operation on March 29, 1967.
Que.: Regulation published June 4, 1973.

3. Territory Encompassed by Plan

- Alta: Province-wide.
Man.: Province-wide - S. 8(3).
N.B.: Province-wide-- S. 20(a), sec. 2(1).
N.S.: Province-wide-- S. 5(1).

- Ont.: Those areas designated by regulation--S. 1(a). The entire Province appears to have been so designated --schedule 1.
- Que.: Those regions designated by regulations--sec. 2. 33. The entire Province appears to have been so designated--schedule A.

4. CONTROL AND ADMINISTRATION

- Alta.: Overall control rests with the Law Society of Alberta --S. 4. The chief executive officer is the (provincial) Director of Legal Aid, who is appointed by the Law Society and has wide powers, overseeing the day-to-day operation of the plan. A joint Legal Aid Committee determines the overall policy of the plan, appoints Regional Legal Aid Committees, and hears and decides appeals against refusals to grant legal aid certificates. This committee is currently composed of eight lawyers, one professor of law, one judge of the Supreme Court of Alberta, and a chartered accountant. The Regional Legal Aid Committees deal with all applications for legal aid in their respective districts.
- B.C.: Legal aid here is administered by the Legal Aid Society of B.C., a non-statutory body which is a non-profit corporation. The main office is in Vancouver, and there are local clinics in Victoria and New Westminster, operated by the local bar associations. There are also 29 "Area Directors" in other smaller urban centres. These are practicing solicitors who deal with applications for legal aid, determine eligibility, and refer applicants to private practitioners.
- Man.: Central control rests with the Legal Aid Services Society of Manitoba, a corporation whose affairs are managed by a Board of Directors consisting of nine persons appointed by the Lieutenant-Governor-in-Council, at least 4 of whom are solicitors--SS. 2-4. The chief executive officer of the Society is the Executive Director, whose duties are set out in sec. 3 (and see also S. 8(1), S. 14, S. 16, sec. 27, and sec. 91). The board, with the approval of the Attorney-General, appoints in each area an Area Director--S. 8(3). Appeals lie from decisions of Area Directors to the Executive Director, and then to the whole board of directors--S. 16, sec. 91.
- N.B.: Central control rests with the Barristers' Society of N.B.--S. 2(1)--which appoints a standing committee on legal aid which is called the Legal Aid Committee --S. 2(2). The Barristers' Society, subject to the approval of the Minister of Justice, appoints a Provincial Director of Legal Aid--S. 3(2)--who appears

to be the chief executive officer in the operation, although his duties and powers are not clearly set out (see secs. 3, 4, 7, 11, 28, 43, 44, 62, 72 & f., and 80 & f.). Area Legal Aid Directors and Area Legal Aid Committees (of not less than 3 persons, at least one of whom is a solicitor) are similarly appointed--S.S. 4(2), 5. The Area Directors handle applications, preparation of panels, and appointment of duty counsel in their respective areas--S. 4(3), sec. 2 & f. The duties of the area committee are vaguely stated to be the representation of the community served by the area committee--sec. 8. Appeals lie from decisions of the area director either to the area committee or to the Provincial Director, as the case may be--S. 13.

N.S.: Central control apparently rests with the Barristers' Society of Nova Scotia, which appoints a standing committee known as the Legal Aid Committee. The plan basically adopts the clinic approach, and it would appear that each local clinic has its own administrative set-up, although there is an executive director, whose offices are in Halifax.

Ont.: Central control rests with The Law Society of Upper Canada - S. 2 - which appoints a special committee known as The Legal Aid Programme Committee - sec. 2. The chief executive officer of the plan is the Director of Legal Aid, who is appointed, subject to the approval of the Minister of Justice and Attorney-General, by the Law Society - S. 3(1), secs. 3-4. Area directors are similarly appointed - S. 3(1) - and deal with certain applications for legal aid - S. 13(1), S. 16, secs. 7-10. Certain other applications must be approved by the area legal aid committee - S. 14(1). Those committees are appointed by the Law Society - S. 4(1). One of the functions of the committees is to represent their communities - sec. 13. Appeals lie from the area director's decision to the area committee and then to the Director - S. 16(10), and from decisions of the area committees to the Director - S. 14(4).

Que.: Central control rests with the Legal Services Commission, a corporation having 12 members appointed by the Lieutenant Governor in Council - SS. 11-21, sec. 2.01 & f. The administration and management of the Commission rests with its appointed chairman - SS. 13 and 18. The duties

of the Commission are set out in S. 22. An administrative committee of the Commission acts as its executive arm - S. 22(n), sec. 2.09. In each area is established, by the Commission, a regional legal aid corporation - S. 22(b), 5.29 & f. Their functions are to establish legal aid bureaus within their respective regions, and to engage advocates and notaries and other necessary employees - S. 32. Their powers are exercised by a board of directors of 12 members appointed by the Commission - S. 35 - which sets up an administrative committee - S. 40. A further function is to recommend to the Commission certification of local legal aid corporations, which apparently are the vehicles within which the legal aid bureaus are established - S. 32(c). The local corporations are overseen by the respective regional corporations - S. 33. A review committee of the Commission - sec. 3.28 - hears application for review of refusal, withdrawal or supervision of legal aid - sec. 3.36. The Commission may temporarily provide legal aid services directly in a region until a regional corporation is established - S. 89a or temporarily assume the functions of such a corporation in certain circumstances - S. 24.

5. Recipients

- Man.: Apparently only natural persons can be recipients, S. 3 speaks of "individuals".
- N.B.: "Person" is defined as a natural person--S. 1(h)--and "applicant" is defined as a "person who applies for a legal aid certificate"--sec. 1(a).
- Ont.: "Person" is defined as an individual--S. 1(j)--and S. 12(1) speaks of giving legal aid to a "person".
- Que.: "Person is defined to include a physical person, a group of persons, or a non-profit corporation whose members are economically underprivileged physical persons--S. 1(6).

6. Non-Provincial Residents

- Alta.: Apparently only residents of Alberta are eligible.
- Man.: Applications by non-residents are made to the executive director, who may, in his discretion, issue a certificate--sec. 16.

- N.B.: Non-residents may be issued certificates only if the Provincial Director feels the interests of justice so demand--S. 10. Provision is made for reciprocal agreements with other provinces or states--S. 10(3) sec. 35.
- Ont.: Non-residents may be issued certificates in the discretion of the Director--S. 16(9), sec. 36.
- Que.: Legal aid will only be granted to those non-residents the government of the domicile or principal residence of whom grants legal aid to Quebec residents--S. 80 (1), sec. 3.26. Provision is made for reciprocal agreements--S. 97.

7. Financial Eligibility

- Alta: Eligible persons are those who, having regard to their income, disposable capital, liabilities, family obligations and such other circumstances as are relevant, are unable to obtain necessary legal assistance out of their own financial resources. The burden of proof in this matter rests with the applicant, and apparently the test is being strictly administered against the applicant at the present time.
- B.C.: Eligible persons are those whose ability to furnish themselves or their families with necessary essentials would be impaired by the payment of legal fees, and those who are, at the time, without funds, and require immediate legal assistance for the preservation of legal rights. Applicants are expected to pay as much of the cost as they are capable of doing.
- Man.: The relevant provisions of sec. 22 and sec. 23(1):
22. Where an application has not been refused by the area director, he shall consider and investigate, if necessary, the income, disposable capital, indebtedness, requirements of persons dependent on the applicant, and such other circumstances as he deems to be relevant; and he shall determine whether the applicant can pay no part, some part, or the whole, of the cost of the legal aid for which application is made, and the amount, if any, which the applicant should contribute towards the cost thereof.

23. (1) Where the area director or the executive director has determined that the applicant can pay some part of the costs, or the whole cost, of the legal aid over a period of not in excess of two years, a certificate shall not be issued until the applicant has signed, and the area director has received, the agreement to pay set out in Form 5.

N.B.: Applicants must pay such part of the cost as they are capable of doing - S. 11(2), secs. 40-41. Sec. 39 provides that the rules for determining financial eligibility are those set out in Schedule B, which reads as follows:

SCHEDULE B
RULES FOR DETERMINING FINANCIAL
ELIGIBILITY FOR LEGAL AID

1. In these Rules

- (a) "adult" means a person sixteen years of age or over;
- (b) "applicant" means a person who has applied for legal aid;
- (c) "dependant" means a dependent child or a dependent adult;
- (d) "disposable income" means the income of an applicant, his spouse and his dependants after deducting from income calculated under Rule 3 the living expenses calculated under Rule 4;
- (e) "dependent adult" means an adult who is substantially supported by the applicant; and includes the spouse;
- (f) "dependent child" means a person under sixteen years of age living with or supported by the applicant;
- (g) "liquid assets" include cash, bonds, stocks, debentures, any other assets that can be converted readily into cash and the beneficial interest in assets held in trust and available to be used for maintenance, but does not include real property or the amount remaining to be paid under a mortgage or or agreement of sale or the cash surrender value of a life insurance policy;
- (h) "spouse" means an adult who is living with the applicant as husband or wife, regardless of legal marital status.

2. The ability of a person to pay no part, some part or the whole of the cost of the legal aid applied for shall be determined with reference to the assets and liabilities, income and expenses of the applicant, his spouse and his dependants.

3. For the purpose of determining the income of the applicant, his spouse and his dependants income includes

- (a) salaries, wages and commissions;
- (b) business, professional, farming, fishing and rental income after deducting reasonable expenses;
- (c) investment income;
- (d) pensions received under the Old Age Security Act (Canada) and the Canada Pension Plan Act;
- (e) allowances received under the War Veterans Allowance Act (Canada), the Civilian War Pensions and Allowances Act (Canada) and the Pension Act (Canada);
- (f) Workmen's Compensation Board payments received under the Workmen's Compensation Act;
- (g) unemployment insurance benefits under the Unemployment Insurance Act (Canada);
- (h) alimony, separation and maintenance payments;
- (i) 40% of the income received from any person for board;
- (j) regular payments received under any annuity, pension or insurance scheme;
- (k) regular payments received from a mortgage, agreement of sale or loan agreement;
- (l) welfare payments received from the Province of New Brunswick or private welfare agency; and
- (m) benefits received directly or indirectly from any other source except as specified in paragraphs (n) and (o)

and does not include

- (n) casual earnings of dependent children;
- (o) family allowances received under the Family Allowances Act (Canada) and Youth Allowances received under the Youth Allowances Act (Canada).

4. For the purpose of determining the requirements and the living expenses of the applicant, his spouse and his dependants, living expenses include

- (a) a basic living allowance for purposes of meeting the cost of food, clothing, household supplies and personal requirements;
- (b) shelter expenses including, where applicable rent, mortgage principal and interest, property taxes, property insurance and necessary maintenance;

3. For the purpose of determining the income of the applicant, his spouse and his dependants income includes

- (a) salaries, wages and commissions;
- (b) business, professional, farming, fishing and rental income after deducting reasonable expenses;
- (c) investment income;
- (d) pensions received under the Old Age Security Act (Canada) and the Canada Pension Plan Act;
- (e) allowances received under the War Veterans Allowance Act (Canada), the Civilian War Pensions and Allowances Act (Canada) and the Pension Act (Canada);
- (f) Workmen's Compensation Board payments received under the Workmen's Compensation Act;
- (g) unemployment insurance benefits under the Unemployment Insurance Act (Canada);
- (h) alimony, separation and maintenance payments;
- (i) 40% of the income received from any person for board;
- (j) regular payments received under any annuity, pension or insurance scheme;
- (k) regular payments received from a mortgage, agreement of sale or loan agreement;
- (l) welfare payments received from the Province of New Brunswick or private welfare agency; and
- (m) benefits received directly or indirectly from any other source except as specified in paragraphs (n) and (o)

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- (n) casual earnings of dependent children;
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4. For the purpose of determining the requirements and the living expenses of the applicant, his spouse and his dependants, living expenses include

- (a) a basic living allowance for purposes of meeting the cost of food, clothing, household supplies and personal requirements;
- (b) shelter expenses including, where applicable rent, mortgage principal and interest, property taxes, property insurance and necessary maintenance;

- (c) income tax, unemployment insurance and pension contributions, union dues and like levies;
- (d) utilities including fuel, hydro, water and telephone;
- (e) transportation expenses necessary to the earning of income or attendance at school, exclusive of depreciation of motor vehicles;
- (f) medical, optical, dental and hospital costs including payments made to any recognized medical or hospital insurance scheme;
- (g) life insurance premiums;
- (h) reasonable charitable donations;
- (i) instalment payments on debts incurred prior to the date of application for legal aid, and;
- (j) such other expenses as are approved by the Provincial Director.

5. In determining whether an applicant can pay no part, some part or the whole of the legal aid applied for an area director shall consider

- (a) in respect of disposable income available, that the applicant has available for contribution a sum equal to the monthly amount of disposable income available, multiplied by eighteen, or the annual amount of disposable income available multiplied by one and one half;
- (b) in respect of liquid assets, that the applicant has available for contribution the aggregate of the full value of the liquid assets owned by him, his spouse and any of his dependants after deducting therefrom the value of the debts and liabilities of the applicant, his spouse and any of his dependants which must be paid from these liquid assets other than encumbrances on real property and the debts referred to in paragraphs (i) and (j) of Rule 4;
- (c) in respect of any life insurance policy on the life of the applicant, his spouse or dependants that the applicant has available for contribution the amount of the cash surrender value of the policy less the sum of \$100.00
- (d) in respect of any interest or estate owned by the applicant, his spouse or dependants in real property used by him as his own dwelling place, that the applicant has available for contribution any portion of the value of the estate or interest that, in the opinion of the area director, exceeds the needs of the applicant, his spouse and his dependants, after deducting therefrom the value of all encumbrances thereon and the necessary expenses of disposition of those encumbrances;

(e) in respect of any interest or estate owned by the applicant, his spouse or any of his dependants in any other real property, that the applicant has available for contribution the full value of the interest or estate after deducting therefrom the value of all encumbrances, thereon and the necessary expenses of the disposition of those encumbrances; and
(f) in respect of any interest owned by the applicant, his spouse or any of his dependants in a motor vehicle or other chattel and the applicant has available for contribution any portion of the value of that interest that, in the opinion of the area director, exceeds the needs of the applicant, his spouse and dependants.

6. Where within twelve months preceding the date of application or at any date subsequent thereto an applicant, spouse or dependant of an applicant has made or makes an assignment or transfer of any interest in liquid assets or real property and, in the opinion of the area director, the consideration for the assignment was or is inadequate and the assignment or transfer was or is made for the purpose of qualifying the applicant for legal aid, the area director may determine that the applicant can pay an increased part of the cost of the legal aid taking into account the value of the asset or property so disposed less the value of the consideration received.

N.S.: There do not appear to be any fixed eligibility requirements. At the present time, persons with an aggregate annual income of less than \$3,000 are eligible, and those earning more than that amount may be eligible if a "needs" test is passed. In practice, the Nova Scotia Department of Welfare criteria are used, although the clinics do not, in fact, have much time which they can spend on determining eligibility.

Ont.: Applicants must pay such part of the cost as they are able to - S. 17. Other relevant provisions are S. 16(3) and sec. 44:

(3) The assessment officer to whom an application is referred shall consider the income, disposable capital, indebtedness, requirements of persons

dependent on the applicant, and such other circumstances as he considers to be relevant that are disclosed in the applicant or that he ascertains after investigation, and he shall report to the area director as to whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for and the sum, if any, the applicant is able to contribute towards the cost thereof.

44. The financial abilities and needs of applicants shall be determined in accordance with standards established by the Department of Social and Family Services. O. Reg. 257/69, s. 44.

Que.: "Economically underprivileged persons" are eligible and this phrase is defined in S. 2:

2. The expression "economically underprivileged person" means for the purpose of this act any person who in the opinion of the Commission or, as the case may be, of a legal aid corporation, lacks sufficient financial means to assert a right, obtain legal counsel or retain the services of an advocate or notary without depriving himself of the means of subsistence, according to the criteria established by regulation under subparagraph (a) of section 80.

The fact that a person is a recipient of social aid under the Social Aid Act (1969, chapter 63) for his ordinary needs is prima facie proof that he is an economically underprivileged person within the meaning of the preceding paragraph.

The qualification criteria are set out at sec. 3.14, and exceptional qualifications at sec. 3.15:

3.14 Qualification criteria: (1) A person who lacks sufficient financial means to assert a right, obtain legal counsel or retain the services of an advocate or notary without depriving himself of the means of subsistence and whose weekly gross income does not exceed the following shall qualify for legal aid;

Social Status	Weekly Gross Income
a single person	\$ 70
a single person with 1 dependant	\$ 85

a single person with 2 dependants	\$ 95
a single person with 3 dependants	\$ 110
a single person with 4 dependants	\$ 120
a single person with 5 dependants	\$ 135
for each additional dependant	\$ 10
a couple (2 married persons or concubines living together off their common resources)	\$ 95
a couple with 1 dependant	\$ 110
a couple with 2 dependants	\$ 120
a couple with 3 dependants	\$ 135
a couple with 4 dependants	\$ 145
a couple with 5 dependants	\$ 160
for each additional dependant	\$ 10

(2) Within the scope of these standards, the qualification of a person is determined according to the available or realizable property of such person, his state of indebtedness, the nature of the services applied for, the factors and circumstances of the proceedings and their consequences in respect of the person's protection, his vital needs or those of his dependants. Family, school and youth allowances (R.S.C., 1970, ch. Y-1) shall be excluded from the weekly gross income.

3.15 Exceptional qualification: A person whose weekly gross income is higher than the standards prescribed in paragraph 3.14(1) may in an exceptional case be qualified for legal aid if the general manager judges that a refusal of legal aid would constitute a grave injustice or cause an

irreparable wrong. Before carrying out his decision, the general manager must obtain the agreement of the board of directors. In case of emergency, he shall issue a temporary certificate. The decision of the board of directors shall be transmitted to the Commission.

The financial eligibility of an applicant may be contested by every interested party in a dispute or case - S. 75.

8. Provisional And Retroactive Certificates

Man.: Provisional certificates - sec. 28.
Retroactive certificates - sec. 26.

N.B.: Retroactive certificates - sec. 47(2).

Ont.: Provisional certificates - S. 16(6), secs. 47,49.
Retroactive certificates - sec. 57.

Que.: Provisional certificates - S. 67.
Retroactive certificates - S. 69.

9. Matters Covered

Alta.: From the report of the Saskatchewan Legal Aid Committee:

(A) Criminal

An indigent person charged with any of the following offences will be entitled to legal aid:

- (1) An indictable offence under the provisions of the Criminal Code of Canada with the following exceptions:
 - a. offences set out in Section 483 of the Code, being those in which a Provincial Judge has absolute jurisdiction and which include, among others, the offences of theft, false pretences, and possession where the value is less than \$50.00 (now \$200.00), obstructing a peace officer, attempted theft, and common assault.

Note: A charge under s. 246(2)(a) (assaulting a peace officer) is covered by legal aid even though set out in s. 483.

(2) An offence under the provisions of the Narcotic Control Act or the Food and Drug Act provided that the prosecution is proceeding by way of indictment and not summary conviction.

Note: A prosecution under either of these two statutes for ordinary possession, is often dealt with as a summary conviction matter.

(3) An offence under a Provincial or Federal Statute where the proceedings are by way of indictment and not summary conviction, unless specifically excluded from coverage by the Alberta Legal Aid Plan.

(4) A prosecution against a juvenile where legal aid is requested by the presiding Juvenile Court Judge or at the discretion of the Legal Aid Committee.

(5) A prosecution under the provisions of the Juvenile Delinquent Act being tried in the Provincial Court.

(6) An application by the Crown for a sentence of preventative detention as a habitual criminal or as a dangerous sexual offender."

In addition to the exclusions from coverage referred to in the foregoing, the following matters are outside the plan:

- (1) A charge under any of Sections 234, 235, 236 or 237 of the Criminal Code of Canada (these cover impaired driving, refusal to submit to breathalyzer test, driving with more than .08 alcohol, and driving while suspended) even if the prosecution is proceeding by way of indictment.
- (2) A charge under a provincial or federal statute such as The Highway Traffic Act, Liquor Control Act, Game Act, Juvenile Delinquents Act, Immigration Act, unless the prosecution is proceeding by way of indictment (which will be very unusual, and under provincial statutes impossible) or unless specifically requested by the presiding judge.

The foregoing is subject to the right of a Regional Committee, in its discretion, to grant legal aid to an accused indigent person excluded from coverage but who can satisfy the Committee that he would face loss of liberty or livelihood if convicted.

(B) Civil Matters

In civil matters there is nothing which is specifically excluded on the basis of the nature of the

proceedings to be taken. The only general limitation on the granting of civil legal aid is that the applicant must be a resident of Alberta. It is up to the area committee to determine in each case whether or not a legal aid certificate shall be issued in a civil matter, although they are required to follow the general policy decision of the Joint Committee to allow legal aid in divorces only where the physical or mental health of the person involved was or would be adversely affected if a petition were not launched immediately. This decision was made because of a lack of funds to carry out all civil and criminal legal aid as originally proposed. Legal aid in civil matters is not restricted to litigation but may also include any service for which a "reasonable person might seek the services of a lawyer".

- B.C.: Matters not covered are as follows (from the report of the Saskatchewan Legal Aid Committee):
1. Divorce and matrimonial causes, including judicial separation, nullity, alimony actions, maintenance orders, alienation of affections, etc., unless the applicant has been referred in writing by a qualified social worker who must recommend such legal aid for the benefit of infant children, or the applicant has obtained a letter of recommendation from a qualified medical practitioner indicating that the health of the applicant may be endangered by the continuing matrimonial problem;
 2. Defamation;
 3. Breach of promise of marriage;
 4. Private prosecutions in criminal and quasi-criminal matters;
 5. The obtaining of Letters Probate or Letters of Administration of estates except where refusal would work undue hardship;
 6. Proceedings relating to any election;
 7. Proceedings subsequent to judgment for recovery of a liquidated sum;
 8. Proceedings in bankruptcy subsequent to a Receiving Order or authorized assignment;

9. Small Debts Court matters;
10. Family Court matters; (legal aid will be provided where a child is apprehended pursuant to the Protection of Children's Act.)
11. Appeals except where in the opinion of the Legal Aid Committee of the Benchers or the local Bar Association, as the case may be, it appears that there has been or may be a substantial miscarriage of justice;
12. Matters where the furnishing of legal services would confer no real benefit upon the applicant, and matters where, if the applicant were able to pay, he would be advised not to proceed with the matter because the cost would be disproportionate to the benefit to be obtained. Legal aid will not be granted to enable persons to pursue remedies which they would not choose to pursue if able to pay in the normal way.
13. Matters where the Legal Aid Society or the local Bar Association, as the case may be, decides that because of special circumstances legal aid should not be granted.

(B) Criminal Matters

Criminal legal aid is subject to the following exclusions:

1. Legal aid will not be given in summary conviction matters unless there is a real possibility that the applicant, upon conviction, would be sentenced to a term of imprisonment.
2. Appeals, except where in the opinion of the Legal Aid Society it appears that there has been or may be a miscarriage of justice.
3. Matters where the Legal Aid Society decides that because of special circumstances legal aid should not be granted.

Man.: The relevant provisions are in secs. 19-20:

19. (1) Except as otherwise provided in the Act or in this regulation, a certificate shall be issued to a person otherwise entitled thereto in respect of any proceeding, or proposed proceeding reasonably anticipated by him,

- (a) in the Court of Queen's Bench; or
 - (b) in the Federal Court of Canada; or
 - (c) in the Court of Appeal for Manitoba; or
 - (d) in a County Court or Surrogate Court; or
 - (e) where the applicant is charged in an indictable offence; or
 - (f) where an application is made for preventive detention under Part XXI of the Criminal Code of Canada; or
 - (g) under the Extradition Act (Canada) or the Fugitive Offenders Act (Canada).
19. (2) Subject to the discretion of the area director a certificate may be issued to a person otherwise entitled thereto,
- (a) in respect of
 - (i) any summary conviction proceeding under an Act of Parliament of Canada or the Legislature of any province in Canada; or
 - (ii) infraction of any by-law of The City of Winnipeg or any municipality in the province; if upon conviction, or upon an order being made, there is a likelihood of imprisonment or loss of the means of earning a livelihood, or the infliction of appreciable financial loss or deprivation upon the applicant, or any dependent of that applicant; or
 - (b) in respect of any prosecution under the Juvenile Delinquents Act; or
 - (c) in respect of any proceeding
 - (i) in a Juvenile or Family Court; or
 - (ii) before a quasi-judicial or administrative board or commission; or
 - (iii) for contempt of court; or
 - (iv) in bankruptcy proceedings subsequent to a receiving order or an authorized assignment; or
 - (d) in respect of drawing documents, negotiating settlements, or giving legal advice, where the subject matter or nature thereof is properly or customarily within the scope of the professional duties of a solicitor.
19. (3) For the purposes of subsection (1) or (2), an offence that may be tried on indictment or on summary conviction shall be deemed to be an offence triable on summary conviction, until such time as the prosecution elects to proceed by way of indictment.
19. (4) Subject to the discretion of the area director, a certificate may be issued to a person otherwise entitled thereto,

- (a) in respect of an appeal to a judge sitting in court or chambers;
 - (b) in an appeal to a Court of Revision from a municipal assessment of a property that is the residence of the applicant, and by way of appeal from the decision of the Court of Revision thereon to the body provided for such appeals of first instance, in any statute or by-law governing municipal assessments and appeals therefrom; and
 - (c) in an appeal to a quasi-judicial or administrative board or commission.
19. (5) Subject to the discretion of the executive director, a certificate may be issued to a person otherwise entitled thereto with respect to any matter to which reference is made in subsections (1), (2) and (4),
- (a) in any application for leave to appeal or an appeal with respect thereto, including applications and appeals to the Federal Court of Canada or the Supreme Court of Canada: or;
 - (b) in any proceeding by way of certiorari, mandamus, prohibition or habeas corpus.
19. (6) Where application is made for in a matter coming within subsection (5), the applicant shall submit to the area director with his application, if available,
- (a) the opinion of the applicant's solicitor as to the advisability of an appeal or an application for leave to appeal;
 - (b) a copy of the order or judgment of the court or board from which appeal is to be taken;
 - (c) a copy of the reasons for the order or judgment from which appeal is to be taken; and
 - (d) such other information as the area director may consider advisable.
19. (7) Where an application under subsection (5), together with its supporting material, has been received by the area director, he shall submit it to the executive director forthwith together with all the information that he has concerning the applicant, including a report of the amount, if any, that the

applicant was required to contribute to the fund, and if he is in default of his payments.

19. (8) On receipt of the decision of the executive director respecting an application to which subsection (7) applies, the area director shall forthwith inform the applicant, in writing, of the decision, and if the application is refused, notice in writing in Form 3 of the refusal of the application shall be sent forthwith by the area director to the applicant.
20. A certificate shall not be issued to a person,
- (a) in proceedings wholly or partly in respect of breach of promise of marriage, loss of service of a female in consequence of rape or seduction, alienation of affections, or criminal conversation; or
 - (b) in proceedings for the recovery of a penalty, where the proceedings may be taken by any person and the penalty, or part thereof, may be payable to the person instituting the proceedings."

N.B.: The relevant provisions are in S. 12:

12. (1) An area director may, in his discretion issue a legal aid certificate authorizing legal aid for proceedings and matters preliminary to anticipated proceedings
- (a) in respect of an offence under an Act of the Parliament of Canada or in respect of the Extradition Act (Canada) or the Fugitive Offenders Act (Canada);
 - (b) in respect of an offence under an Act of the Legislature;
 - (c) before an administrative tribunal established by an Act of the Legislature or of the Parliament of Canada;
 - (d) in bankruptcy;
 - (e) under the Divorce Act (Canada);
 - (f) other than those covered in subsections (a) to (e), in the Supreme Court of New Brunswick, the Court of Divorce and Matrimonial Causes, the Provincial Court, a county court or probate court of New Brunswick, the Supreme Court of Canada or the Exchequer Court of

Canada; and

(g) of an appellate nature in respect of matters and proceedings described in such of clauses (a) to (f) as are in force.

- (2) An area director may, in his discretion, issue a legal aid certificate authorizing legal services, other than those associated with judicial and administrative proceedings, that are customarily within the scope of the professional duties of a barrister and solicitor, including drawing documents, negotiating settlements and giving legal advice.
- (3) An area director may amend a legal aid certificate from time to time to alter the scope of the legal aid authorized by that certificate.
- (4) An area director shall not issue or amend a legal aid certificate under clause (a) of subsection (1) to authorize legal aid in respect of an offence punishable on summary conviction unless he is of opinion that
 - (a) there is a possible defence to the charge;
 - (b) there are in existence circumstances that would serve to mitigate the severity of the penalty that may be imposed; or
 - (c) because of extraordinary circumstances, it is in the interests of justice that the applicant be represented by counsel.
- (5) Where the applicant has an election as to the manner in which he may be tried, a legal aid certificate issued in respect of proceedings under clause (a) of subsection (1) shall authorize proceedings in Provincial Court only unless the applicant's solicitor certifies to the area director that, in his opinion, the interests of the accused require that he elect to be tried by a judge without a jury or by a court composed of a judge and jury, in which case the area director may amend the certificate accordingly.

the certificate accordingly.

- (6) An area director shall not issue or amend a legal aid certificate to authorize legal aid for proceedings included in clause (b) of subsection (1) unless
 - (a) there appears to be a likelihood of imprisonment or loss of means of earning a livelihood upon conviction; and
 - (b) he is of the opinion that
 - (i) there is a possible defence to the charge,
 - (ii) there are in existence circumstances that would serve to mitigate the severity of the penalty that may be imposed, or
 - (iii) because of extraordinary circumstances, it is in the interests of justice that the applicant be represented by counsel.
- (7) An area director shall not issue or amend a legal aid certificate to authorize legal aid in respect of clause (c) or (d) of subsection (1) unless he is of the opinion that the applicant has an interest that ought to be raised or protected in the matter or proceeding and that it is in the interests of justice that the applicant be represented by counsel.
- (8) An area director shall not issue or amend a legal aid certificate to authorize legal aid in respect of clause (e) or (f) of subsection (1) unless, in his opinion, it is reasonable under the circumstances of the case to institute or defend the proceedings, or to continue the action or defence to the action, as the case may be.
- (9) In determining the reasonableness of the proposed course of action under subsection (8), an area director shall consider the matter from the standpoint of a usual solicitor and client relationship, taking into account the possibility of success, the cost of the proceedings in relation to the anticipated loss or recovery, and the likelihood of enforcing judgment.

- (10) Except where in the opinion of the area director the circumstances of an application require the immediate issue or amendment of a legal aid certificate, an area director shall not issue or amend a legal aid certificate to authorize legal aid in respect of clause (g) of subsection (1) unless
- (a) the applicant has included in his application
 - (i) the opinion of his solicitor as to the advisability of instituting or defending an appeal,
 - (ii) a copy of the order or judgment appealed from, and
 - (iii) such other information as the area director requires him to provide;
 - (b) the area director considers that it is reasonable that the appeal be instituted or defended;
 - (c) the area director has submitted the application to the area committee for that area, if one has been established or to the Provincial Director if an area committee has not been established for that area; and
 - (d) the area committee or the Provincial Director, as the case may be, has approved the issuing or amending of a legal aid certificate.
- (11) the Provincial Director may refer to the Legal Aid Committee for its recommendation any matter requiring his approval under clause (d) of subsection (10).

N.S.: No restrictions are placed on the matters covered, either in criminal or civil matters.

Ont.: The relevant provisions are in SS. 12-15, and S. 16(11):

12. An area committee shall consist of not less than five members a majority of whom shall be members of the Law Society. O. Reg. 257/69, s. 12.

13. Persons who are not members of the Law Society shall be selected as representing the community served by the area committee. O. Reg. 257/69, s. 13.

14. Members of an area committee shall be appointed for a term of one year or until their successors are appointed. O. Reg. 257/69, s. 14.

15. A member of an area committee who desires to resign shall submit his resignation in writing to the Director. O. Reg. 257/69, s. 15.

(11) The Director may issue a certificate to an appellant or respondent in a criminal appeal where the Supreme Court of Canada or the Court of Appeal for Ontario is of the opinion that it is desirable in the interests of justice that the appellant or respondent should be represented and has requested that counsel be appointed and the Director is satisfied that the appellant or respondent has not sufficient means to employ counsel. 1968-69, c. 60, s. 7, <u>part</u> .	Certificate upon request of court
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Que.: The relevant provisions are in S. 10 and sec. 3.19:

10. Legal aid may be granted at any stage of the case before the court of original jurisdiction or in appeal, before any court and for any proceeding, contentious or not; it extends to proceedings in execution.	When aid granted.
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3.19 Legal services not included: Legal aid benefits shall not include the following legal proceedings.

- (a) an action for defamation or an action for libel, plaintiff only;
- (b) an action in contestation of an election;
- (c) an action in case of usurpation of offices or franchises (C.C.P., ch. 2, Title 6, Book 5);
- (d) an action for damages for breach of promise of marriage, plaintiff only.
- (e) an action for damages resulting from alienation of affection, plaintiff only.
- (f) an action in respect of which a fine is likely to be payable, in whole or in part to the claimant, plaintiff only;

- (g) any defence relating to an offence against laws or by-laws respecting parking.

The expenditures incurred by a corporation, the obligations it assumes and the engagements undertaken for legal aid purposes shall not exceed, for one financial year, the amounts at its disposal for the same year.

10. Grounds For Refusing Certificate

Man.: The relevant provisions are in sec. 21(1):

- 21. (1) Every application for legal aid, not being a matter in which clause (e), (f), or (g) of subsection (1) of section 19 applies, shall be considered by the area director receiving it; and it shall be rejected by him if, under the circumstances, including questions of law or fact arising out of the applicant's claim to relief or defence, or the nature of the matter sought to be dealt with by a solicitor, it appears that
 - (a) the applicant requires legal aid in a matter in which he is concerned in a representative, fiduciary, or official capacity, and it appears the costs can be paid out of any property or fund that is sufficient to pay those costs; or
 - (b) the applicant is entitled to financial or other aid, and has reasonable expectations of receiving such aid; or
 - (c) the legal aid for which application is made is frivolous, vexatious, an abuse of the process of the court, or an abuse of the facilities provided by the Act or by this regulation; or
 - (d) the relief sought can bring no benefit to the applicant over and above the benefit that would accrue to him as a member of the public or some part thereof; or
 - (e) the professional services sought are available to the applicant without legal aid; or
 - (f) the applicant has failed, without reasonable justification, to meet any obligation to the society with respect to legal aid; or
 - (g) no sufficient reason for the granting of the certificate is shown at the particular time.

21. (2) The area director shall send to the applicant notice in writing in Form 4 of the refusal of an application for legal aid; and he shall send a copy of the notice to the executive director forthwith.

N.B.: The relevant provisions are in sec. 38, and they are the same as the Ontario provisions.

Ont.: The relevant provisions are in sec. 39:

39. Subject to section 40, every application for legal aid not being within clause d or clause e of section 12 of the Act, shall be considered by the area director receiving it and if under all the circumstances, including questions of law or fact arising out of the applicant's claim to relief or defence or the nature of the matter sought to be dealt with by a solicitor.

(a) it appears that,

- (i) the applicant requires legal aid in a matter in which he is concerned in a representative, fiduciary or official capacity and it appears the costs can be paid out of any property or fund which is sufficient to pay such costs,
- (ii) the applicant is entitled to financial or other aid or has reasonable expectations of such aid and has failed to satisfy the area director that such aid is not available to him,
- (iii) the legal aid applied for is frivolous, vexatious, an abuse of the process of the court or an abuse of the facilities provided by the Act,
- (iv) the relief sought can bring no benefit to the applicant over and above the benefit that would accrue to him as a member of the public or some part thereof,
- (v) the relief sought, if obtained, is not enforceable in law,
- (vi) the applicant has failed without reasonable justification in any obligation to the Law Society with respect to legal aid, or

- (vii) the professional services sought are available to the applicant without legal aid,
he shall refuse to grant a certificate to the applicant, or
(b) it appears that,

- (i) the applicant is one of a number of persons having the same interests under such circumstances that one or more may sue or defend on behalf of or for the benefit of all,
(ii) the applicant has the right to be joined in one action as plaintiff with one or more other persons having the same right to relief by reason of there being a common question of law or fact to be determined,
(iii) the application is for legal aid for which the applicant has previously received a certificate with respect to the same action or matter,
(iv) the relief sought is enforceable only in some other jurisdiction,
(v) the cause of action may be prosecuted or defended only in a court of some other jurisdiction, or
(vi) no sufficient reason for the granting of the certificate is shown at the particular time,

he may refuse to grant a certificate to the applicant.
O. Reg. 257/69, s. 39.

Que.: In litigious cases, the applicant must establish the probable existence of a right - SS. 4 and 63. The other relevant provisions are set out in S. 70:

70. Legal aid may be refused, suspended or withdrawn, as the case may be, with regard to any person otherwise eligible, when such person, without sufficient reason:	Grounds for refusal, etc., of aid
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- (a) neglects to provide the information or documents required to study his application;
- (b) neglects to comply with section 68;
- (c) refuses or neglects to exercise his legal rights and recourses;
- (d) refuses or neglects to cooperate with the advocate or notary rendering professional services for him, in the manner that is normal and customary between an advocate or notary and his client.

11. Legal Personnel: Salaried v. Fee For Service

Alta.: Exclusively fee for service.

B.C.: The Legal Aid Society of B.C. has a staff of three lawyers. In the main part, however, private practitioners are used on a fee for service basis.

Man.: Every neighbourhood legal aid centre has a "senior attorney" who appears to be on a full-time, salaried basis - secs. 49-50. Such centres are also authorized to employ solicitors on a full-time basis - sec. 51. Other than that, solicitors work on a fee for service basis. Duty counsel are paid a flat rate per day - Schedules 1 & 2.

N.B.: Exclusively fee for service. Duty counsel are paid by the hour, up to a maximum amount per day - Schedule C, Part 3.

N.S.: The clinic approach is adopted here, and the clinics are staffed by salaried lawyers. It is contemplated, however, that private practitioners will act without fee when so requested by a clinic.

Ont.: Exclusively fee for service under the statute. Duty counsel are paid by the hour - Schedule 4.

Que.: Here, also, the clinic approach is adopted, and the clinics are staffed by salaried lawyers and notaries - S. 32(b). In certain cases, however, private practitioners are used on a fee for service basis. Examples are cases of insufficient staff - S. 53; cases where special competence is required - S. 54; where legal aid is already being granted to the

other party in a dispute, and the option of using the staff of another corporation is not exercised - S. 55; cases where the client specially chooses an outside lawyer or notary, and where the services required have not been reserved to full-time staff by the Commission - S. 52, secs. 3.20 - 3.21.

12. Clinics

Alta.: The only provision for a clinic here is with respect to the clinic operated by the law students of the University of Alberta. Legal aid in the northern part of the province is provided to the native people by way of holding workshops

B.C.: The Legal Aid Society of B.C. is basically a clinic organization, with the main set-up in Vancouver, and with other clinics in Victoria and New Westminster. There are also neighbourhood clinics in Vancouver.

Man.: Clinics are provided for here in the form of Neighbourhood Legal Aid Centres - S. 19, sec. 48 & f. - to serve the needs of particular communities. No mention is made as to whether those areas served by such Centres also have legal aid panels, or whether the panels exist only in other areas. Provision is also made for student clinics by way of a University Law Centre - sec. 44 & f. - and by way of student legal aid projects, the permitted objects of which appear to be wide enough to encompass the establishment of clinics - S. 20.1.

N.B.: Provision is made for the establishment of clinics, and for the incorporation under the plan of existing legal aid clinics - sec. 63. Student clinics are envisaged in the form of student legal aid societies - sec. 68 & f.

N.S.: This is basically a clinic operation.

Ont.: The only statutory provision for clinics is with respect to student clinics by way of student legal aid societies - S. 21(d), sec. 74 & f.

Que.: This also is basically a clinic operation, with exceptional cases involving the use of private practitioners as outlined in para. 10 above.

13. Use of Students

Alta.: Students at the University of Alberta operate a small

clinic which, in reality, is merely a referral agency where indigent persons can be passed on to the legal aid office.

- Man.: A lawyer doing legal aid work may assign to a "graduate-at-law" such duties, under his supervision, as is permitted by the Law Society Act - S. 13(3). Any full-time undergraduate student of the University of Manitoba, Faculty of Law may assist in the work of the Legal Aid Services Society, where permitted by the Law Society Act - S. 20.1(2). Any student having completed one year of law studies may participate in the University Law Centre, the control of which rests with the Dean of the Faculty of Law - sec. 44 & f. "Graduates-at-law" may also work for Neighbourhood Legal Aid Centres - sec. 51 - and may act as duty counsel as permitted by law - sec. 55 - and may assist duty counsel in Juvenile Court as permitted by law - sec. 58.
- N.B.: Students who have completed two years of law studies may participate in student legal aid societies - sec. 71. Aside from other duties prescribed to them, such societies may, upon request by area directors, provide assistance to duty counsel and panel solicitors, and provide assistance to persons who have been refused certificates for reasons other than financial - sec. 70.
- Ont.: Students having completed one year of law studies may participate in student legal aid societies, the control and supervision of which rest with their respective "deans". "Dean" includes the Director of the Bar Admission Course and the chief administrator of any law course approved by the Law Society. Such societies may perform the same functions as those outlined with respect to the N.B. student societies - sec. 77. Articled students may perform the same functions as the Manitoba "graduates-at-law" - sec. 79 & f.
- Que.: The services of law students may be retained by regional corporations - S. 32(b).

14. Costs Awarded Against Client

- Man.: The Legal Aid Services Society is not liable for costs awarded against the client in any proceeding taken on his behalf under the Act - S. 15(8).

- N.B.: The client may apply to the Provincial Director for payment of costs awarded against him in any proceedings taken or defended by him - sec. 95(1). If the client fails or refuses so to apply, the party to whom costs were awarded may make such application after 90 days - sec. 95(2).
- Ont.: Same provisions as in N.B., except "reasonable time" is substituted for 90 days, and the application "shall", rather than "may", be referred to the Legal Aid Committee - secs. 129-130.
- Que.: The client is not exempt from condemnation to costs, but it is unclear whether legal aid is liable for their payment - S. 8.

ADDENDUM TO COLLATION OF CANADIAN LEGAL AID STATUTES

1. P.E.I.

The Legal Aid Act, S.P.E.I. 1973, Cap. 14, not yet proclaimed, and no regulations yet passed thereunder,

The P.E.I. Legal Aid Agency is established (S. 3), whose affairs are managed by its Board of Directors, which consists of 5 persons: a representative from each of the Law Society, the Provincial Dept. of Justice and Attorney-General, the Attorney-General of Canada, the Provincial Department of Social Services, and the community at large (S. 4). Day-to-day operation of the plan rests with the Provincial Director of Legal Aid, who is appointed, subject to the approval of the Minister, by the Agency (S. 5).

The statute creates an exclusively fee-for-service plan, and covers criminal matters only. The matters covered are (S. 6):

- a) offences under acts of Parliament punishable by way of indictment.
- b) proceedings under the Juvenile Delinquents Act (Canada),
- c) offences under acts of Parliament punishable by way of summary conviction, if in the opinion of the Agency there is a likelihood that upon conviction there will be a sentence of imprisonment or the loss of means of earning a livelihood,
- d) proceedings under the Extradition Act (Canada), and the Fugitive Offenders Act (Canada),
- e) appeals by the Crown in any of the matters referred to in paragraphs (a), (b), (c), or (d), and
- f) appeals by an accused in any of the matters referred to in paragraphs (a), (b), (c), or (d), if in the opinion of the Agency the appeal has merit, or if the court appealed to requests the appointment of counsel to represent the accused.

2. New Brunswick

The Legal Aid Act has been amended by S.N.B. 1973 Ch. 54. The amendments relate to: (1) granting

(ii)

of certificates to persons not ordinarily resident in N.B. (2) circumstances in which a certificate is not to be issued, and (3) circumstances in which a solicitor whose name is not on a panel may be retained.

The second Annual Report of the N.B. operation, covering the period 1972-1973, is on file, and it contains a fairly complete breakdown of the organization and operation of the plan.



ATTORNEY-GENERAL'S
DEPARTMENT
ONTARIO